APPENDIX D

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
CHANCERY DIVISION

Docket No. C-3956-85

MORTON THIOKOL, INC.,

Plaintiff,

vs.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, *et al.*,

Defendants.

PLAINTIFF'S BRIEF IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO CERTAIN CARRIER DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

* * * *

Accordingly, in determining the applicability of the ISO form, the crucial question is whether the insured intended or expected the harm for which it seeks coverage. Moreover, in answering that question, the court should apply a subjective standard, *i.e.*, whether Plaintiff actually expected or intended the harm for which it seeks coverage.

Respectfully submitted,

ARCHER & GREINER
A Professional
Corporation
Attorneys for Plaintiff
Morton Thiokol, Inc.

By: /s/ Edward C. Laird
Edward C. Laird

SUPREME COURT OF NEW JERSEY

DOCKET NO. 34,341

MORTON INTERNATIONAL, INC., successor to Morton Thiokol, Inc., now named Thiokol Corporation,
Plaintiff-Appellant,

vs.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants-Respondents.

CROSS APPEAL FROM JUDGMENT OF APPELLATE DIVISION

REPLY BRIEF OF DEFENDANT-RESPONDENTS/CROSS-APPELLANTS INSURANCE COMPANY OF NORTH AMERICA, AMERICAN HOME ASSURANCE COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, UNDERWRITERS AT LLOYD'S LONDON, AND LONDON MARKET INSURANCE COMPANIES

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We would distinctly prefer that the Court reject reliance on the regulatory history because it is inadmissible and because on their face the documents do not support the interpretation that *Broadwell* gave them. If, however, this Court found that it was inclined to accept the representations from other cases about what the documents showed, we specifically challenge the accuracy and completeness of the "evidence" and would request a plenary hearing.[11]

* * * *

Dated: June 29, 1992

[11] Judge Huot did not allow discovery on extrinsic evidence in the trial court and did not hear evidence on the drafting of the pollution exclusion. Likewise, in *Broadwell* there was no discovery or plenary proceeding with respect to extrinsic evidence.

Respectfully submitted,

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SUPREME COURT OF NEW JERSEY

DOCKET NO. 34,341

MORTON INTERNATIONAL, INC.,
Plaintiff-Petitioner,

v.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, LIBERTY MUTUAL INSURANCE COMPANY, AFFILIATED FM INSURANCE COMPANY, AMERICAN HOME ASSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, FIRST STATE INSURANCE COMPANY, INSURANCE COMPANY OF NORTH AMERICA, UNDERWRITERS AT LLOYDS, LONDON and LONDON MARKET COMPANIES,
Defendants-Respondents,

and

AETNA CASUALTY & SURETY COMPANY, *et al.*,
Defendants.

ON GRANT OF CERTIFICATION FROM THE FINAL JUDGMENT OF NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

PETITIONER'S BRIEF IN OPPOSITION TO *AMICUS* AETNA'S MOTION TO EXPAND THE RECORD BELOW

• • • •

Morton could understand, particularly in light of the findings of the West Virginia Supreme Court in *Joy Tech-*

nologies, that this Court might be interested in receiving more information on the pronouncements of the insurance industry to state insurance commissioners, particularly those representations made here in New Jersey, at the time the pollution exclusion clause was proposed.[4]

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BY: /s/ Edward F. Kugler, Jr.
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Dated: July 8, 1992

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ON THE BRIEF:

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[4] *Amicus* New Jersey League of Municipalities has reproduced the IRB's June 10, 1970, submission to the New Jersey Insurance Commissioner representing, as it had in West Virginia, that the pollution exclusion clause "clarifies" existing coverage (*See* Appendix of *Amicus Curiae* New Jersey League of Municipalities, Exhibit "J"). This evidence would, in Morton's view, be a proper subject for judicial notice under New Jersey Evidence Rule 9. The Court can readily contrast this use of public filings with Aetna's failure to reference this material in its motion, in favor of citation to an *internal* ISO memorandum that purports to interpret the public submission (*See* Aetna's Memorandum In Support, at 8; Asa 845).

SUPREME COURT OF NEW JERSEY

DOCKET NO. 34,341

MORTON INTERNATIONAL, INC., successor to Morton Thiokol, Inc. now named Thiokol Corporation,
Plaintiff-Appellant,

vs.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants-Respondents.

CROSS APPEAL FROM JUDGMENT OF APPELLATE DIVISION

BRIEF IN ANSWER TO *AMICUS CURIAE* BRIEF OF THE STATE OF NEW JERSEY

* * * *

A. It Is Fundamentally Unfair To Supplement The Record With Extrinsic Evidence Which Is Incomplete, Unnecessary And Raises Questions Of Fact

The pollution exclusion is clear and unambiguous and should be interpreted without any resort to extrinsic evidence. (Brief at 11-15, 20-24, 42-47)[1] Thus, the State's

[1] References are to the Brief of Defendants-Respondents/Cross-Appellant Insurance Company of North America, American Home Assurance Company, Liberty Mutual Insurance Company, Underwriters at Lloyd's London, and London Market Insurance Companies.

reliance upon purported extrinsic evidence should be rejected as a matter of law.[2] In any event, it is fundamentally unfair for this Court to interpret the pollution exclusion based upon a small sampling of extrinsic evidence selected by the State, especially where such purported evidence is incomplete and raises questions of fact.

The State unfairly seeks to rely on snippets of a few regulatory history documents (which it selected) in arguing that the pollution exclusion is ambiguous and, therefore, synonymous with the occurrence definition. Not only is it far too late in the day to be introducing these selectively chosen documents, the State also misinterprets the very documents it has selected. Admitting the documents as evidence will not resolve what their drafters intended or what the drafters of the pollution exclusion intended. The State simply asks the Court to accept its own interpre-

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[2] Similarly, the Court should give no credence to the "scholarly" commentaries relied on by the State. The "Chesler" commentary the State so heavily relies upon was authored by counsel who routinely represents policyholders in environmental insurance litigation. *See* State's Br. at 24, 25, 26 and 31. Indeed, Mr. Chesler's firm, Lowenstein, Sandler, Kohl, Fisher & Boylan, represents policyholder *amicus* Westinghouse Electric Corporation in this appeal.

Our brief also refers the Court to published commentaries by insurer counsel. We cite to these articles not as authority, but rather as a proffer of the types of evidence which are available should the need for an evidentiary hearing arise. *See The Emperor's Illusionist: Policyholders Retreat From Pollution Exclusion Extrinsic Evidence*, 6 Mealey's Insurance Litigation Reports No. 25 (Part One) (May 5, 1992) and (Part Two) (May 12, 1992) and *The Occurrence Definition And Extrinsic Evidence: The Diogenesian Search For The Reasonable Man*, 6 Mealey's Insurance Litigation Reports No. 31 (June 16, 1992). *See* supplementary appendix of *amicus curiae* Aetna Casualty and Surety Company (hereinafter "Asa") at Asa37-74, Asa75-108 and Asa108-126 respectively. *See also The West Virginia Regulatory Filings and Extrinsic Evidence Of The "History" Of The Pollution Exclusion*, 6 Mealey's Insurance Litigation Reports No. 47 (October 20, 1992). These articles are hereinafter referred to as *"Emperor's Illusionist"*, *"Occurrence Definition"* and *"West Virginia Regulatory Filings"* respectively.

tation of these documents. Even if extrinsic evidence were admissible, it is fundamentally unfair to let one side put its gloss on a few documents which it has chosen—without allowing the other side an adequate opportunity to challenge that interpretation with its own evidence and, where appropriate, by taking testimony of the authors and recipients. The insurers have not been given that opportunity. This Court is not a trial court, and it should not be lulled into becoming a finder of hotly contested factual issues that were never considered by the trial court, *i.e.*, what particular documents mean.

Nor should the Court make a decision based on an incomplete or one-sided record. A court which resorts to extrinsic evidence should do so on a complete record fairly contested by the parties. Even where it is relevant and admissible, extrinsic evidence should not be considered unless to rebut unfavorable evidence. That is why it is doubly unfair to admit extrinsic documentary evidence directly into an appellate record and to do so after the close of briefing by the parties. Even a preliminary review of the State's use of regulatory documents illustrates the dangers of admitting evidence in a setting where it cannot be challenged. Sections B and C, *infra*, discuss how the State misreads the very documents it relies upon when it incorrectly contends that the introduction of the occurrence policy in 1966 resulted in a rate increase.

* * * *

The State's introduction at this time of a few hand picked twenty-five year old documents demonstrates the dangers presented by the unquestioning acceptance of extrinsic evidence. The documents proffered by *amicus curiae* Aetna Casualty and Surety Company demonstrate that there is another side to the drafting history and regulatory history story presented by the State. The explanations provided by the State of its documents raise questions of fact which should not be resolved on appeal. Fact finding

is the job of the trial court, not this State's highest Court.[5] If this Court must go beyond the plain language of the pollution exclusion to reach its conclusion, then the matter should be remanded. It is for the trial court to make a finding of fact based on a real record composed of all relevant documents, not a select few, and the testimony of documents' drafters, not a lawyer's interpretation. It is the trial court's interpretation of what the evidence shows which would then be reviewed by this Court.[6]

* * * *

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[5] This is the fundamental error committed by the West Virginia Supreme Court in *Joy Technologies v. Liberty Mutual Insurance Co.*, No. 20153 (W. Va. June 11, 1992). The West Virginia Supreme Court undertook to review documents from the West Virginia Insurance Department's July 1970 hearing on the pollution exclusion. It did not have the benefit of any fact finding by the trial court concerning the true facts and circumstances from the document drafters. Instead it conducted a *de novo* review and reached a conclusion which, as discussed, *infra*, was subsequently contradicted by Samuel Weese, the West Virginia Insurance Commissioner at the time of the hearing.

[6] The State's use of extrinsic evidence should also be rejected because there is no proffer by the Attorney General that the documents offered represent the entire files maintained by the Insurance Department in connection with the regulatory materials. A cursory review suggests that the files are incomplete. For example, document numbers 31, 32 and 33 state that the Insurance Department requested a legal opinion, presumably from the Attorney General's office, before approving the pollution exclusion. The legal opinion is not among the documents offered by the State.

CONCLUSION

For the foregoing reasons, the undersigned insurers request that the Court not accept the extrinsic evidence submitted by the State of New Jersey because the plain language of the pollution exclusion is clear and unambiguous. Even if the Court believes there should be a resort to regulatory history and drafting history, fairness dictates that the matter be remanded for an evidentiary hearing or a full record. Finally, the State fails to set forth any logical basis to rebut the trial court's and the Appellate Division's conclusion that the intent to injure could be inferred from Thiokol's fifty years of polluting activity.

Dated: November 12, 1992

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SUPREME COURT OF NEW JERSEY

DOCKET NO. 34,341

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Plaintiff-Appellant,

vs.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants-Respondents.

CROSS APPEAL FROM JUDGMENT OF APPELLATE DIVISION

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

* * * *

The Steen affidavit, which is attached as Appendix A, shows that the Department, in fact, understood that from the policyholders' and regulators' point of view the exclusion was *both* a clarification *and* a restriction in coverage. Steen also explains the approval process and a number of important public policy considerations that were reviewed by the Department in light of the apparent restrictions in coverage:

> I also had no particular problem in discerning that—*from a contractual standpoint*—the filings introduced specific new exclusionary language

> that was sufficiently important to be evaluated not only in terms of contractual effect but, also, in terms of public policy considerations. Our thoughts ran along many lines, such as: should polluters be protected from the economic consequences of their intentional acts through insurance; should payment through insurance be available where the polluter cannot pay; should insurers pay, but have contractual recourse against the insured; should it be a basic coverage whose cost would be borne by all insureds? (Steen Aff. ¶ 6).

Steen's testimony is supported by contemporaneous documents that were missing from the Department's files when requested by the insurer parties but which appeared for the first time after briefing and oral argument of this appeal. One of these documents, an April 20, 1970 memorandum by Steen, expressly recognized the potential restrictive effect of the exclusion, stating that "for some risks without adequate financial resources to pay the costs of such losses, this exclusion may transfer the burden of the cost to public governmental agencies." (Appendix D, Cert. Ex. D). Another belatedly disclosed document is a legal opinion by Walter Davis, a Director with the Department, which recommended that the exclusion be disapproved *because of its obvious restrictive effect.* (Appendix D, Cert. Ex. M). These documents and the Steen affidavit both undercut the central premise of the Court's decision and warrant reconsideration since they were not available to the carriers when the case was briefed and argued.

Reconsideration is also particularly appropriate because, contrary to the Court's apparent impression, the affected insurers have never had their day *in any court in the country.* Not one of the handful of decisions that have discussed the "regulatory history" has even given the carriers a chance to defend themselves against these allegations. Given the importance of the Court's decision, the

fact that relevant documents sought by the insurers from the Department were never available to them, and the availability of new testimony that should fairly have been considered in conjunction with the allegations against the insurers, due process requires that the Court reconsider and give the insurers a chance to defend themselves against these most serious allegations.

The Court's decision to estop an entire industry from relying on the plain meaning of the pollution exclusion is particularly unfair because of its dramatically adverse impact on entirely innocent parties. The decision will bind insurance companies, such as INA, who were not members of the IRB when the exclusion was submitted in 1970, but who subsequently adopted the exclusion in reliance on the Department's approval. Indeed, many companies using the standard pollution exclusion did not even exist in 1970. By rejecting the insurers' pleas for a hearing, the Court not only renders a decision of far-reaching consequences without a fully developed record, it also proceeds in a manner that is so fundamentally unfair as to violate the due process requirements of the New Jersey and United States Constitutions.

The Court relies upon its decision in *Harr v. Allstate Insurance Co.*, 54 N.J. 287 (1969), for the application of estoppel to void particular insurance contract language because of a misrepresentation of policy coverage. The Court overlooks that in *Harr*, even though a *prima facie* case for estoppel had been established, the Court directed that the carrier was entitled to a remand to present its own evidence. The carriers have not had a fair opportunity to address the estoppel issue. As in *Harr*, due process and this Court's tradition for fundamental fairness require that the carriers be given a hearing.

* * * *

POINT IV

IT IS FUNDAMENTALLY UNFAIR TO INVOKE ESTOPPEL WITHOUT A HEARING OR AGAINST PARTIES WHO DID NOT PARTICIPATE IN THE 1970 FILINGS

The due process requirements of the United States and New Jersey Constitutions mandate that the carriers be permitted to produce evidence in their defense and be provided with a hearing before such a drastic remedy as estoppel can be invoked against them.

The Court need look no further than its teaching in *Harr v. Allstate Insurance Co.*, 54 N.J. 287 (1969), for the proposition that even though a *prima facie* case of estoppel may have been made out on appeal, the insurers are entitled to a trial on remand so that they can produce evidence in their defense. *Id.* at 310. *Harr*, like the present case, involved a situation in which the insurer prevailed on summary judgment in the trial court and in the Appellate Division. This Court reversed, concluding that the policyholder had made out a *prima facie* case of estoppel which would bar the carrier from denying coverage. *Id.* The Court recognized, however, that the insurer was entitled to put on a defense. Indeed, even though at oral argument the defendant insurer's counsel admitted that he could not then determine what evidence he could produce at trial, this Court recognized that "[d]efendant's proofs may be so substantial when all the evidence is in that plaintiffs will not be entitled to judgment." *Id.* at 308.

A. The Carriers Were Deprived Of Their Due Process Right To A Fair Evidentiary Hearing

The Court denied the insurers their Fourteenth Amendment rights to due process when it estopped the entire insurance industry from relying on the "literal terms" of the pollution exclusion without the opportunity to present a fully developed factual record and to rebut the evidence upon which the Court relied.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). In *Fuentes*, the Supreme Court noted:

> [W]hen a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented.

Id. at 81. The fundamental due process right to a hearing embraces the right to present evidence and to confront and to cross-examine adverse evidence. *Green v. McElroy*, 360 U.S. 474, 497 (1959).

> Certain principles have remained relatively immutable in our jurisprudence. . . . We have formalized these protections in the requirements of confrontation and cross-examination . . . This Court has been zealous to protect these rights from erosion . . . It has spoken out not only in criminal cases [cites omitted] . . . but also in all types of cases where administrative and regulatory actions were under scrutiny.

Id. at 496-97. The due process values embodied in Article I, paragraph 1 of the New Jersey Constitution require no less. *Ledezna v. A&C Drywall*, 254 N.J.Super. 613, 618 (App. Div. 1992).

Saunders v. Shaw, 244 U.S. 317 (1917), is directly on point with the facts of the present case. In *Saunders*, the Supreme Court reversed a decision by the Louisiana Supreme Court because the state's highest court had unconstitutionally denied a request for an evidentiary hearing on whether a parcel of property was subject to a tax assessment. *Id.* at 319. The state court had denied a hearing because it believed that the legality of the assessment "was so plain on the uncontroverted facts [and] . . . to

remand [the case] would be an empty form—a mere concession to technically." *Id.* Justice Holmes highlighted the constitutional infirmity in the state court's reasoning:

> It *may* turn out so, but we do not see in the record an *absolute warrant* for the assumption and therefore cannot be sure that the defendant's rights are protected without giving him a chance to put his evidence in.

Id. (emphasis added).

As shown above, this Court erroneously assumed that the record contained all important evidence regarding the regulatory history of the pollution exclusion. The Court's determination that it would be "redundant" to remand the case for an evidentiary hearing violated the insurers' due process rights under the Fourteenth Amendment. *See Fuentes,* 407 U.S. at 90, n.22 ("A prior hearing always imposes some costs in time, effort, and expense, and it is often more efficient to dispense with the opportunity for such a hearing. . . . But these rather ordinary costs cannot outweigh the constitutional right"); *Bell v. Burson,* 402 U.S. 535, 540-41 (1971) ("Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. . . . While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process").

Where, as here, the nature of the deprivation could be potentially enormous for the injured party, the necessity for a prior and meaningful opportunity to challenge adverse evidence through the fundamental truth-finding process of cross-examination is especially compelling. *See, e.g., Boddie v. Connecticut,* 401 U.S. 371, 378 (1970) ("The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings").

The carriers respectfully request that this Court allow a meaningful opportunity for the insurers to be heard and to present evidence on the regulatory history of the pollution exclusion. Time and time again the Supreme Court has reaffirmed the fundamental due process requirement that "wherever one is assailed in his person or his property, there he may defend." *Boddie*, 401 U.S. at 377 (quoting *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876)).

* * * *

D. It Is Fundamentally Unfair To Invoke Estoppel Against A Party Which Did Not Participate In The 1970 Filing Or Did Not Even Exist In 1970

INA was not a member of the IRB at the time of the filing of the standard "sudden and accidental" pollution exclusion in 1970. Indeed, INA submitted and used for many years its own form of the pollution exclusion. Other insurance carriers, such as Columbia Casualty Company, did not even exist in 1970. Subsequent to 1970, however, INA, Columbia Casualty and numerous other insurers have utilized the "sudden and accidental" exclusion construed by the Court. It is fundamentally unfair to invoke the doctrine of estoppel against INA, Columbia Casualty, and other similarly situated insurance companies.

* * * *

Dated August 30, 1993

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June 10, 1970

Hon. R.L. Clifford, Ins. Comm.
Dept. of Ins., State of N.J.
State House Annex
Trenton, N.J. 08625

Manuals of Liability Insurance
Contamination or Pollution Exclusions

Dear Sir:

The Bureau is submitting on behalf of our members and subscribers and to the extent required by applicable statute or regulation, contamination and pollution exclusions that will apply to all general liability insurance covering bodily injury and property damage except comprehensive personal and farmers comprehensive personal liability and professional liability insurance. An explanation of the exclusions is contained in the attached memorandum.

We anticipate in the next few days to submit appropriate endorsements to implement the introduction of the above exclusions.

It is proposed that this revision become effective July 29, 1970 in accordance with the following rule of application:

> These changes are applicable to all new an renewal policies written on or after July 29, 1970 and to all policies written before July 29, 1970 which will become effective on or after October 1, 1970. No policy effective prior to July 29, 1970 shall be endorsed or canceled and rewritten to

take advantage of, or to avoid the application of these changes except at the request of the insured and at the customary short rate charges as of the date of such request but in no event prior to July 29, 1970.

Since there is a great concern by the companies for the adoption of these exclusions, we respectfully request your favorable consideration of this submission. In order to facilitate transmittal of your acknowledgment or approval, an extra copy of this letter, together with a stamped, self-addressed envelope are enclosed.

Very truly yours,

/s/ D.E. Kuizensa
Secretary

Mutual Insurance Rating Bureau
Memorandum-Manuals of Liability Insurance

Contractual Liability Manual
Manufacturers' and Contractors' Liability Manual
Owners', Landlords' and Tenants' Liability Manual
Owners' or Contractors' Protective Liability Manual
Product Liability Manual

Page No.

Cont. 6, M & C 4b, OL & T 5 & 200, OCP 6, Prod. 4b

Add the following as contractual exclusion (n), manufacturers' and contractors' exclusion (q), owners', landlords' and tenants' exclusion (r), storekeepers' exclusion (p), owners' or contractors' protective exclusion (j) and products exclusion (k):

> Contamination or Pollution Exclusion. Bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

Cont. 6, M & C 4b, OL &T 5 & 200, OCP 6, Prod. 4b

Add the following as contractual exclusion (o), manufacturers' and contractors' exclusion (r), owners', landlords', and tenants' exclusion (s), storekeepers' exclusion (q), owners' or contractors' protective exclusion (k) and product exclusion (l):

> Contamination or Pollution—Described Operations-Supplementary Exclusion. With respect to the operations described below, bodily injury or property damage arising out of the discharge,

dispersal, release or escape of oil or other petroleum substance or derivative (including any oil refuse or oil mixed with wastes) into or upon any watercourse or body of water, whether or not such discharge, dispersal, release or escape is sudden and accidental.

Description of Operations

Gas Lease Operators—natural gas
Gasoline Recovery—from casing head or natural gas
Non-operating working interests
Oil or Gas Wells—Shooting
Oil or Gas Wells—acidizing
Oil or Gas Wells—cementing
Oil or Gas Wells—cleaning or swabbing—by contractors
Oil or Gas Wells—drilling or redrilling, installation or recovery of casing
Oil or Gas Wells—instrument logging of survey work in wells
Oil or Gas Wells—Perforating of casing
Oil Lease Operators
Oil Pipe Lines—operation, including maintenance
Oil Rig or Derrick Erecting or Dismantling—wood or metal—including construction of foundations or structures or installation of equipment

Explanation

Coverage for pollution or contamination is not provided in most cases under present policies because the damages can be said to be expected or intended and thus are excluded by the definition of occurrence. The above exclusion clarifies this situation so as to avoid any question of intent. Coverage is continued for pollution or contamination caused injuries when the pollution or contamination results from an accident except that no coverage will be provided under certain operations for injuries arising out of discharge or escape of oil into any body of water.

This exception for oil is justified, in our opinion, because oil spillage into water is a catastrophic phenomenon of recent occurrence and not contemplated when existing rates were made. The public has become increasingly aware of agonizing effects of oil spillage and resentful of the failure of oil risks to take the ordinary step to avoid them. To ignore the attitude of society toward the destructive effects of oil spillage by making insurance readily available, as part of underlying coverage, without regard for the exposure could be interpreted as a disregard for the public interest and the public policy, and could well subject the insurance industry to public criticism. Because of this situation any companies that may afford this insurance will undoubtedly do so only after a very carefully survey of the exposure and the methods for preventing oil spillage into water in order to assure protection for the public interest.